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March 7, 2019

**Via Electronic Filing**

The Honorable Jocelyn G. Boyd  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, SC 29210

RE: Joint Application of Duke Energy Carolinas, LLC and Duke Energy Progress,  
LLC to Establish Green Source Advantage Programs and Riders GSA  
**Docket Number 2018-320-E**

Dear Ms. Boyd:

Please find attached for electronic filing *Final Comments* on behalf of the South Carolina Coastal Conservation League (CCL) and Southern Alliance for Clean Energy (SACE) in the above-referenced matter.

Please contact me if you have any questions concerning this filing.

Sincerely,

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Enclosures  
CC (w/encl.): Parties of Record

STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2018-320-E

In the Matter of:	)	
	)	
Petition for Approval of Green	)	FINAL COMMENTS OF SOUTH
Source Advantage Programs and	)	CAROLINA COASTAL
Riders GSA	)	CONSERVATION LEAGUE AND
	)	SOUTHERN ALLIANCE FOR CLEAN
	)	ENERGY
	)	
	)	

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The South Carolina Coastal Conservation League and Southern Alliance for Clean Energy (collectively, “Conservation Groups”) file the following Final Comments in this proceeding, pursuant to the South Carolina Public Service Commission’s (“Commission”) January 30, 2019 Directive Order.

The Conservation Groups filed Comments on January 7, 2019 responding to Duke Energy Progress, LLC’s (“DEP”) and Duke Energy Carolinas, LLC’s (“DEC”) (collectively, “Duke” or “the Companies”) Green Source Advantage Application (“GSA Program”) filed by the Companies on October 10, 2018. The South Carolina Office of Regulatory Staff (“ORS”) and the South Carolina Solar Business Alliance (“SCSBA”) also filed comments on January 7, 2019. The Companies filed Reply Comments on January 28, 2019. The Conservation Groups recommended in their January 7, 2019 Comments that Duke make multiple clarifications and program design changes regarding the proposed GSA Program, including to (1) clarify that the program capacity is additional to the North Carolina Green Source Advantage program capacity; (2) include

an additional fixed GSA Bill Credit option, set at Duke's administratively-determined avoided cost rate; (3) allow GSA Customers to procure renewable energy to meet 125% of their annual energy usage, rather than 125% of their maximum annual peak demand; (4) decrease the threshold contract demand for GSA Customers from 3 MW to 1 MW to allow greater access to the program; (5) provide a range of GSA Service Agreements terms, up to 20 years; and (6) file a proposed GSA Service Agreement for Commission and intervenor review.

The Conservation Groups appreciate the clarifications and changes that the Companies have made in response to comments filed in this proceeding, including clarifying that the GSA Program capacity is additional to any North Carolina GSA Program capacity, and decreasing the threshold contract demand from 3 MW to 1 MW. However, the Conservation Groups remain concerned that the proposed GSA Bill Credit will not support sufficient program participation and will be unnecessarily restrictive, that the procurement cap of 125% of annual demand may limit participation, that the Companies have not agreed to provide a GSA Service Agreement for review, and that Duke has misconstrued certain references to the North Carolina GSA Program proceeding. The Conservation Groups also address portions of the North Carolina Utilities Commission's February 1, 2019 Order on the North Carolina GSA proceeding that are relevant to this proceeding.

#### 1. The North Carolina Green Source Advantage Order

The North Carolina Utilities Commission ("NCUC") issued an Order in the North Carolina Green Source Advantage proceeding ("NC GSA Order") on February 1, 2019.<sup>1</sup>

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<sup>1</sup> NCUC Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, Order Modifying and Approving Green Source Advantage Program, Requiring Compliance Filing, and Allowing Comments (Feb. 1, 2019).

In its NC GSA Order, the NCUC required Duke to revise its GSA program to include a 5-year fixed bill credit option for participating customers based on the administratively-determined avoided cost rate. In its program application, Duke had proposed to link the GSA Bill Credit primarily to the pricing in North Carolina's new competitive procurement of renewable energy ("CPRE") program. The NCUC also approved an hourly day-ahead variable rate that was presented in a proposed settlement between Duke and Walmart.<sup>2</sup>

Over the arguments of multiple intervenors, including the University of North Carolina, Google, Apple, the Attorney General's Office, clean energy advocates, and representatives of the solar industry and commercial and industrial ("C&I") customers, the NCUC approved a GSA program structure that included an option for participating customers to receive a bill credit that is based on a fixed five-year avoided cost rate, rather than a bill credit that is based on a ten- or twenty-year fixed avoided cost rate.

Significantly, three NCUC Commissioners filed concurring opinions addressing the bill credit, and one Commissioner filing a concurring opinion also filed a dissenting opinion. All three Commissioners indicated that they would have provided a GSA Bill Credit option equal to Duke's 10-year avoided cost rate.<sup>3</sup> The Commissioners reasoned that a ten-year avoided cost term likely was necessary to enable some potential customers to participate in the program and expressed concern that a bill credit term of shorter duration might preclude access to the program.<sup>4</sup>

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<sup>2</sup> See NCUC Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, Agreement and Stipulation of Partial Settlement by and Between Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Wal-Mart Stores East, LP and Sam's East, Inc. at 1-2 (Aug. 16, 2018).

<sup>3</sup> This included an option to include a 10-year energy-only avoided cost rate.

<sup>4</sup> See, NCUC Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, Commissioner Daniel G. Clodfelter, concurring; Commissioner Charlotte A. Mitchell, concurring in part; and Commissioner ToNola D. Brown-

As this Commission is aware, the NCUC's order is not binding on it, but it provides further support for the assertion that offering GSA Program customers only an Hourly Bill Credit Rate would not support participation in the GSA Program. Arguments by numerous intervenors in the proceeding, and the concurring and dissenting opinions of three Commissioners, also demonstrate that a GSA Bill Credit shorter than ten years may not adequately support participation in the GSA Program.

## 2. The Proposed GSA Bill Credit

In response to initial comments by the Conservation Groups and the SCSBA, Duke argues that the Hourly Bill Credit Rate is the only appropriate option for GSA Program participants.<sup>5</sup> Duke argues that the Hourly Rate Bill Credit provides sufficient transparency and certainty to potential C&I program participants and that Duke should not be required to offer a long-term fixed bill credit rate that is based on the Companies' administratively-determined avoided cost rate.

The Conservation Groups continue to have concerns that the Hourly Rate Bill Credit will not provide sufficient certainty for many potential GSA participants. In support of its proposed Hourly Bill Credit Rate, Duke notes that "the Hourly Rate calculation reflects the same marginal cost of generating electricity that is used in the Companies real-time pricing rate schedules" available to C&I customers in South Carolina.<sup>6</sup> Significantly, however, these real-time pricing options available to C&I customers are entirely optional. Although the real-time pricing schedules may be

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Bland, concurring in part and dissenting in part (Feb. 1, 2019). Commissioner Clodfelter found that a 10-year energy-only avoided cost rate was "not unreasonable."

<sup>5</sup> South Carolina Public Service Commission Docket No. 2018-320-E, Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC at 9-16 (January 28, 2019)("Duke Energy Reply Comments").

<sup>6</sup> *Id.* at 10.

attractive to some C&I customers in South Carolina, other C&I customers will not be willing or able to take on this price uncertainty. Similarly, while the proposed GSA Hourly Bill Credit Rate may be acceptable for certain C&I customers, many customers may be unable to utilize these rates as their only option for program participation.

Duke also cites Georgia Power's Renewable Energy Development Initiative Commercial and Industrial Program ("C&I REDI Program"),<sup>7</sup> which credits customers based on the actual hourly running cost of incremental generation based on the customers' pro-rata share of the hourly amount of energy produced at the C&I REDI facilities. Duke states that the "C&I REDI Program is fully subscribed, evidencing customers' acceptance of the hourly rate credit methodology."<sup>8</sup>

However, Georgia Power's C&I REDI Program is fundamentally distinguishable from the proposed GSA Program. Unlike the proposed South Carolina GSA program, the C&I REDI Program allows customers to withdraw from the program "at any time without a termination payment upon 180 days' written notice to Georgia Power."<sup>9</sup> This termination right allows customers to participate in a low-risk program that provides an off-ramp if the variable bill credit proves to be unworkable for the participating C&I customer.<sup>10</sup> The C&I REDI Program also allows participating customers to subscribe for terms ranging from 10 to 30 years.<sup>11</sup>

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<sup>7</sup> Ga. Public Serv. Comm'n, Order Approving Renewable Energy Development Initiative Commercial and Industrial Program, Docket No. 40161 (Aug. 9, 2017) ("Georgia C&I REDI Order").

<sup>8</sup> Duke Energy Reply Comments at 12.

<sup>9</sup> Georgia C&I REDI Order at 2.

<sup>10</sup> Additionally, under the C&I REDI program, participating customers subscribe to renewable energy projects that are procured as part of a broader competitive solicitation program. As a result, even if a C&I customer withdraws from the program, Georgia Power will continue to purchase the energy and capacity from the renewable energy facility under the applicable competitive procurement program. *See*, Georgia C&I REDI Order.

<sup>11</sup> *Id.* at 2.

In contrast, Duke's proposed GSA Program has no such opt-out mechanism for GSA customers receiving an Hourly Bill Credit Rate. GSA Program customers would not know the bill credit they would receive from Duke,<sup>12</sup> and instead, would be locked into this uncertain rate. This may limit GSA Program customers' ability to manage the financial uncertainty of the Hourly Bill Credit Rate, and ultimately, to participate in the program.

The Conservation Groups also agree with the SCSBA that the proposed Hourly Bill Credit Rate—established by Duke without opportunity for input from stakeholders—fails to adequately value capacity and other grid services.<sup>13</sup> This Hourly Bill Credit Rate represents only a short-term variable energy rate. In contrast, the Commission-approved avoided cost rate more accurately incorporates avoided capacity and other costs avoided by independent renewable energy generation in the Companies' service territories. These administratively-determined avoided cost rates also represent the rates at which non-participating customers are held neutral, balanced with the need for price certainty that many GSA Program participants will require in order to participate in the GSA Program.

In their January 7, 2019 Comments, the Conservation Groups submitted that the GSA Bill Credit should be based on the current avoided cost rate and should be fixed for the duration of the GSA agreement, up to 20 years. While the Conservation Groups maintain that a 20-year GSA Service Agreement—and a fixed 20-year avoided cost GSA Bill Credit—would be appropriate in the GSA Program, the Conservation Groups do not oppose the SCSBA's proposal regarding the duration of the GSA Bill Credit that would

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<sup>12</sup> Duke states that it will provide GSA customers with a "detailed calculation of the GSA Bill Credit and historical day-ahead pricing." Duke Energy Reply Comments at 11. Although this data will notify customers of previous rates, it will not provide certainty regarding the GSA Bill Credit during the customer's participation in the program.

<sup>13</sup> SCSBA Comments, at 6.

establish an Alternative Bill Credit that is based on Duke's administratively determined avoided costs and fixed for an initial period equal to the shorter of (i) the term of the GSA Service Agreement, (ii) ten years, or (iii) such shorter period as may be mutually agreed to by Duke and the GSA Customer.<sup>14</sup> This proposal would provide an acceptable method of calculating the GSA Bill Credit.

With respect to the duration of the GSA Bill Credit, Duke also argues that the Commission should not establish a GSA Bill Credit based on long-term avoided cost rates. Duke maligns the availability of long-term fixed contracts in the context of renewable energy procurement and asserts that such contracts impose unacceptable overpayment risk on ratepayers.<sup>15</sup> However, long-term fixed contracts are ubiquitous throughout utility operations and regulation, both in the context of renewable energy procurement and in Duke's own business operations.

Many of the Companies' own self-build decisions, for instance, are based upon similar "uncertain" forecasts. For example, DEP's Richmond County Combined Cycle facility and DEC's Cliffside Unit 6—which turned out to be advantageous and

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<sup>14</sup> *Id.* at 7. The SCSBA's complete proposal, which the Conservation Groups do not oppose, stated:

1. Duke Energy will offer an Alternative Bill Credit that is based on its administratively determined avoided costs and fixed for an initial period equal to the shorter of (i) the term of the GSA Service Agreement, (ii) ten years, or (iii) such shorter period as may be mutually agreed to by Duke and the GSA Customer.
2. For a GSA Service Agreement with a term of ten years or longer, the initial fixed term of the bill credit shall be ten years unless shortened by mutual agreement of the parties.
3. Where the GSA Service Agreement has a term that exceeds the initial fixed term of the bill credit, the bill credit for subsequent years shall be "refreshed" for the subsequent fixed term.
4. Unless otherwise mutually agreed to by the parties, the duration of the subsequent fixed term of the bill credit shall be equal to the shorter of (i) the remainder of the term of the GSA Service Agreement, or (ii) ten years.
5. The initial avoided cost rates for the initial bill credit are based upon the Commission's most recently approved avoided cost methodology in effect at the time that the Commission approves the GSA Program. The bill credit for any subsequent term will equal Duke's avoided cost rates based on the Commission's most recently approved avoided cost methodology in effect at the time of the "refresh".

<sup>15</sup> Duke Energy Reply Comments at 12-15.



disadvantageous for ratepayers, respectively, were based on uncertain fuel prices at the time the resource decisions were made. While the Companies warn of overpayment risks, they also overlook potential underpayment to GSA Program customers through the GSA Bill Credit if avoided costs increase in the future, and they fail to address the value of price certainty that fixed contracts provide to the Companies. These types of resource decisions are inherent in the Companies' business model, yet the Companies direct their criticism in this proceeding only to the fixed GSA Bill Credit proposed by the Conservation Groups and the SCSBA.

Duke also refers to the NCUC's order in the 2016 biennial PURPA avoided cost proceeding and states that the NCUC's recognition of the potential for overpayment to qualifying facilities ("QFs") was "part of [the NCUC's] rationale for limiting longer-term avoided cost contracts and evolving PURPA implementation in that state." Notably, however, QFs in North Carolina continue to have the option to enter into fixed 10-year PPAs under the PURPA standard offer contract option, and the "evolving PURPA implementation" in North Carolina that Duke refers to includes a competitive procurement program that provides fixed 20-year PPAs to renewable energy projects selected through the competitive procurement process.<sup>16</sup>

Similarly, in South Carolina, QFs choosing to sell energy and capacity under a standard offer contract in the Companies' service territories are eligible for fixed avoided cost rates up to 10 years.<sup>17</sup> The Commission also recently approved the SCE&G/Dominion merger that provides for the continued availability of 10-year fixed

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<sup>16</sup> See N.C. Gen. Stat. § 62-110.8(b)(3).

<sup>17</sup> SC PSC, Docket No. 1995-1192-E, Order No. 2016-349, Order Approving Revised Schedules PP (SC) Purchased Power and PP Purchased Power, and Terms and Conditions for Each as Proposed by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (May 12, 2016).

contracts. Providing a GSA Bill Credit option equal to the Companies' avoided cost rate for terms of at least ten years would be consistent with this Commission's practice in similar regulatory contexts. The availability of a fixed GSA Bill Credit is also consistent with long-standing federal law that repeatedly and consistently requires the availability of long-term fixed contracts.<sup>18</sup>

Duke also references the NCUC Public Staff's position in the NC GSA Program proceeding, stating that "the Public Staff specifically noted overpayment risk concerns associated with long-term, forecasted avoided cost rates, and supported the Companies' GSA Bill Credit structure...as agreed to by the Companies and Walmart and presented in the NC GSA Program docket."<sup>19</sup> First, although the Public Staff did not object to the hourly rate in the context of the settlement proposal between Duke and Walmart, the Public Staff also supported a fixed GSA Bill Credit in addition to the hourly rate. Additionally, and contrary to Duke's characterizations, the Public Staff supported a fixed bill credit at the Companies' administratively determined avoided cost up to 10 years.<sup>20</sup>

For these reasons, the Conservation Groups request that the Commission allow GSA customers to choose a GSA Bill Credit that is fixed for the duration of the GSA Agreement or that includes a 10-year "refresh" for GSA Agreements longer than ten years, as proposed by the SCSBA.

### 3. Duke Should File a GSA Service Agreement and PPA with the Commission

In their January 7, 2019 Comments, the Conservation Groups recommended that Duke provide a copy of its GSA Service Agreement to the Commission for review

<sup>18</sup> See, 16 U.S.C. § 824a-3 *et seq.* (The Public Utility Regulatory Policies Act of 1978); 18 C.F.R. § 292.304(d)(2); See, e.g. *Windham Solar LLC & Allco Fin. Ltd.*, 157 FERC ¶ 61134 at P 8 (Nov. 22, 2016).

<sup>19</sup> Duke Energy Reply Comments, at 16.

<sup>20</sup> NCUC Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, Reply Comments of the Public Staff at 9 (April 20, 2018).

because the GSA Service Agreement will contain significant terms and conditions that will impact GSA Program participants. The SCSBA also requested that Duke provide proposed GSA Program Power Purchase Agreements (“PPA”) to the Commission for review.<sup>21</sup> In its Reply Comments Duke stated that the GSA Service Agreement is not intended to be a *pro forma* agreement, and that the Companies have agreed to file executed PPAs with ORS. However, filing executed PPAs after they are negotiated does not address the concerns regarding important terms and conditions that will be included in the GSA Service Agreement and PPA. The Companies have filed a standard PPA in the NC GSA Program in response to requests from intervenors, and Duke should similarly file a PPA with the Commission in this proceeding.<sup>22</sup> The Conservation Groups maintain their request that the Companies file these documents with the Commission for review to promote fairness and transparency in the program.

#### 4. 125% Renewable Energy Procurement Limitation

In its Reply Comments, Duke responded to the Conservation Groups’ recommendation that the GSA Program should allow participating customers to procure up to 125% of their energy usage rather than 125% of their maximum annual peak demand. Duke acknowledged that limiting participation to 125% of peak demand may not allow customers to meet institutional renewable energy goals, but Duke expressed concern that allowing participation up to 125% of energy usage “could unfairly limit program participation to several very large customers.”<sup>23</sup>

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<sup>21</sup> SCSBA Comments at 7.

<sup>22</sup> NCUC Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, Green Source Advantage Self-Supply Power Purchase Agreement (Aug. 29, 2018).

<sup>23</sup> Duke Energy Reply Comments at 8.

The Conservation Groups first note that the Companies emphasized in Reply Comments that they developed their GSA Program based on interest “of their larger, more sophisticated C&I customers, in order to assist those customers in meeting their renewable energy goals,” so the Companies’ purported concern about limiting participation to several large customers does not square with their own description of their intent in developing the program.<sup>24</sup> Additionally, Duke estimates that a customer with a 3 MW peak demand would have an annual energy usage of 26,280 MWh.<sup>25</sup> This estimate is significantly inflated because (1) it assumes that the customer’s annual peak demand would apply during all 8,760 hours of the year, and (2) it assumes that the customer would operate at its peak demand 24 hours a day, 7 days a week, which is unlikely.

The Conservation Groups recognize that allowing program participation based on 125% of annual energy usage would allow participating customers to contract for projects of larger MW capacity. This would help ensure that the 150 MW of program capacity was fully subscribed, and on balance, the ability of customers to meet institutional renewable energy goals through the GSA Program and to help ensure the program is fully subscribed outweigh the concerns Duke has expressed about the potentially reduced number of program participants if customers are able to contract for 125% of their annual energy usage.

## 5. Conclusion

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<sup>24</sup> *Id.* at 11-12. In their defense of the proposed Bill Credit, the Companies also cite letters of support from a small number of C&I customers as evidence that there is sufficient customer interest in the proposed program.

<sup>25</sup> *Id.* at 8.

The Conservation Groups thank the Commission for the opportunity to provide additional comments in this proceeding. As discussed herein, the Conservation Groups respectfully request that the Commission require the Companies to:

1. Include an additional fixed GSA Bill Credit option, set at Duke's administratively-determined avoided cost rate for a term of at least ten years, or the duration of the GSA Agreement if shorter than ten years;
2. Allow GSA Customers to procure renewable energy to meet 125% of their annual energy usage, rather than 125% of their maximum annual peak demand;
3. Provide a range of GSA Service Agreement terms up to 20 years; and
4. File a proposed GSA Service Agreement and PPA for Commission and intervenor review.

These changes will help ensure that the GSA Program is accessible, transparent, and cost-neutral to non-participating customers, while providing meaningful opportunities for eligible GSA Program customers to satisfy institutional renewable energy procurement goals.

Respectfully submitted this 7th day of March, 2019.

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STATE OF SOUTH CAROLINA  
BEFORE THE PUBLIC SERVICE COMMISSION  
DOCKET NO. 2018-320-E

In re: Joint Application of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to Establish Green Source Advantage Programs and Riders GSA	) ) ) ) )	CERTIFICATE OF SERVICE
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I certify that the following persons have been served with a copy of the *Final Comments* by electronic mail and/or U.S. First Class Mail at the addresses set forth below:

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This the 7th day of March, 2019.

s/ Lauren Fry  
Lauren Fry  
Southern Environmental Law Center